80-783

No. _____

Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

October Term 1980

PARK COUNTY, MONTANA and SWEET GRASS COUNTY, MONTANA, political subdivisions of the STATE OF MONTANA,

Petitioners,

-vs-

UNITED STATES OF AMERICA, acting by and through the SECRETARY OF AGRICULTURE and the FOREST SUPERVISOR of the Gallatin National Forest, and CROSS CREEK PROTECTIVE ASSOCIATION,

Respondents.

On Writ of Certiorari

to the Court of Appeals for the Ninth Circuit

Petition for Certiorari

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NO. _____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1980

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Petitioners,

-vs-

UNITED STATES OF AMERICA, acting by and through the SECRETARY OF AGRICULTURE and the FOREST SUPERVISOR of the Gallatin National Forest, and CROSS CREEK PROTECTIVE ASSOCIATION, [1]

Respondents.

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ON A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE NINTH CIRCUIT

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TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

PARK COUNTY, MONTANA and SWEET GRASS COUNTY, MONTANA, the petitioners herein, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered in the above-entitled case on August 29, 1980.

QUESTIONS PRESENTED

(1) Whether the 12-year statute of limitations under 28 U.S.C. §2409a(f) applies to every action brought under that Act, notwithstanding that the plaintiff is a state, a political subdivision of a state or some other governmental entity, attempting to enforce a sovereign or public right, as opposed to a proprietary right.

[1] The Mountain States Legal Foundation appeared as amicus curiae in the Circuit Court.

(2) Whether the District Court properly concluded that as a matter of law the plaintiffs-petitioners knew or should have known of the claim of the United States to the right-of-way claimed by plaintiffs, and all thereof, more than 12 years before this action was brought.

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OPINIONS BELOW

The opinion of the United States District Court for the District of Montana, the Hon. James F. Battin, District Judge, is unreported and is printed in the Appendix hereto, infra, page 18. The opinion of the United States Court of Appeals for the Ninth Circuit is unreported and is printed in the Appendix hereto, infra, page 13.

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit (Appendix, infra, page 24) was entered on the 29th day of August, 1980. No petition for rehearing was filed. The jurisdiction of this Court is invoked under 28 U.S.C. §1254.

STATUTE INVOLVED

The statute involved is 28 U.S.C. §2409a, which provides as follows:

> "(a) The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights. This section does not apply to trust or restricted Indian lands, nor does it apply to or affect actions which may be or could have been brought under sections 1346, 1347, 1491, or 2410 of this title [USCS §§1346, 1347, 1491, or 2410], sections 7424, 7425, or 7426 of the Internal Revenue Code of 1954, as amended (26 U.S.C. 7424, 7425, and 7426), [26 USCS §§7424, 7425, and 7426], or section 208 of the Act of July 10, 1952 (43 U.S.C. 666) [43 USCS

§666].

"(b) The United States shall not be disturbed in possession of control of any real property involved in any action under this section pending a final judgment or decree, the conclusion of any appeal therefrom, and sixty days; and if the final determination shall be adverse to the United States the United States nevertheless may retain such possession or control of the real property or of any part thereof as it may elect, upon payment to the person determined to be entitled thereto of an amount which upon such election the district court in the same action shall determine to be just compensation for such possession or control.

"(c) The complaint shall set forth with particularity the nature of the right, title, or interest which the plaintiff claims in the real property, the circumstances under which it was acquired, and the right, title, or interest claimed by the United States.

"(d) If the United States disclaims all interest in the real property or interest therein adverse to the plaintiff at any time prior to the actual commencement of the trial, which disclaimer is confirmed by order of the court, the jurisdiction of the district court shall cease unless it has jurisdiction of the civil action or suit on ground other than and independent of the authority conferred by section 1346(f) of this title [28 USCS §1346(f)].

"(e) A civil action against the United States under this section shall be tried by the court without a jury.

"(f) Any civil action under this section shall be barred unless it is commenced within twelve years of the date upon which it accrued. Such action shall be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States.

"(g) Nothing in this section shall be construed to permit suits against the United States based upon

adverse possession. (Added Oct. 25, 1972, P.L. 92-562, §3(a), 86 Stat. 1176.)"

STATEMENT

The plaintiff-petitioners (hereinafter called "Petitioners") are counties, which are political subdivisions of the State of Montana. On October 4, 1976, Petitioners filed a complaint, under the provisions of 28 U.S.C. §2409, to quiet title to an easement across certain lands located within the boundaries of the Gallatin National Forest.

This action was filed to quiet title to an alleged county road right-of-way across a part of the Gallatin National Forest located in Park and Sweet Grass Counties, Montana. It was alleged that a county road was established in 1893 from Chimney Rocks Pass, which is located near Cooke City, Montana, along the route generally described in paragraph IX of the complaint, to the vicinity of the Hidden Treasure Mines, as shown on the map, Exhibit "C" to the complaint. In 1893, Park County also contained the lands now comprising Sweet Grass County. On March 5, 1895, Sweet Grass County was created out of a part of Park County and the alleged road is now located partly in Park County and partly in Sweet Grass County. (Complaint, paragraph IV.) Petitioners alleged that: "All legal requirements for the establishment of the road from Chimney Rocks Pass to the Boulder Mining District were met and a county road was duly established; and in the event any technical defect or defects existed with regard to establishing the road in a manner strictly in compliance with the existing laws said defect or defects were cured by the enactment of Section 2600 of the Montana Political Code of 1895, which was a statute specifically enacted to cure any prior procedural irregularities in the establishment of public highways." (Complaint, paragraph XI); and also alleged in paragraphs XIII and XIV of the complaint that:

"That prior to the establishment of the Absaroka National Forest on September 4, 1902, the Board of County Commissioners of PARK COUNTY, MONTANA, accepted the grant of right-of-way conveyed in Section 932 of Title 43 of the United States Code, in that said Board of County Commissioners

intended to accept said grant, laid out, created, constructed or took positive action in furtherance of the acceptance of said grant."

"That because the Board of County Commissioners of PARK COUNTY, MONTANA, accepted the grant of a highway right-of-way conveyed in Section 932 of Title 43 of the United States Code, for the road from Chimney Rocks Pass to the Boulder Mining District, said road was not reserved for the public when the area through which said road passes was made a part of the Absaroka National Forest on September 4, 1902; therefore, the defendant, UNITED STATES OF AMERICA, has no right, title or interest in said property."

The foregoing, basically, was the claim of the Petitioner counties.

In their answer, the defendant, UNITED STATES OF AMERICA (hereinafter called "Government"), alleged, among other things, as an affirmative defense that the time prescribed by the statute of limitations for filing this action had been exceeded.

After the complaint was filed, CROSS CREEK PROTECTIVE ASSOCIATION (hereinafter called "Cross Creek") was allowed to intervene as a party defendant.

In their answer, Cross Creek raised the following affirmative defense:

"Plaintiffs are barred from prosecuting this action by 28 USC 2409(f) because the statute of limitations has lapsed and Plaintiffs knew and should have known of the claim of the United States to the real property in question over twelve years prior to the commencement by Plaintiffs of this action."

and also were allowed to amend their answer to allege, as an additional affirmative defense, the defense of laches.

After certain discovery, the Government moved the District Court to dismiss this action for lack of jurisdiction and Cross Creek moved for summary judgment, upon the ground of failure to bring this action within the 12-year limitation period prescribed by 28 U.S.C. §2409a(f).

Cross Creek's motion for summary judgment was solely upon "the grounds that, with respect to the question whether Plaintiffs are barred from bringing the present action by the statute

of limitations, there are no material facts in dispute and Defendants are entitled to Judgment in their favor as a matter of law."

On March 17, 1978, the Court granted both motions and ordered that judgment be entered in favor of the Government and Cross Creek and denying Petitioners all relief.

The District Court, in its "Memorandum and Order" granting the motions, stated that: "The basis for both motions is the assertion that plaintiffs are barred from bringing the present action by the provisions of 28 U.S.C. §2409a(f)."

Such a judgment was entered on March 21, 1978. Petitioners filed a notice of appeal from said judgment on April 18, 1978.

The appeal was decided adversely to Petitioners by the United States Court of Appeals on August 29, 1980.

The decision of the Court of Appeals regarding the question of whether the Petitioners "knew or should have known of the claim of the United States" to the road right-of-way in question, more than twelve years prior to the commencement of the action,within the meaning of 28 U.S.C. §2409a(f), hinges upon the placement of a sign by the Government, in 1962, at one point adjacent to the claimed county right-of-way. A small pile of rocks were also placed along the banks of Slough Creek where the claimed right-of-way crossed Slough Creek at this point.

There is some dispute as to whether the claimed right-of-way goes through what was then the Absaroka Primitive Area and whether the sign referred to the road or to the Primitive Area to the immediate west of the road.

However, even assuming that the road, which is about 26 miles long, did go through what was then the Absaroka Primitive Area, it only could have gone through it for, at most a mile or two, and the sign could only relate to this portion of the claimed right-of-way.

REASONS FOR GRANTING THIS WRIT

There are two questions of great importance for granting this writ.

The first is whether a statute of limitations or adverse

possession may run against a public highway maintained by a governmental body.

This Court has never decided this issue, with respect to a public highway, so far as is known to Petitioners.

The issue really is grounded in the concept of state sovereignty and whether the Federal government, by some non-judicial, non-legislative, and apparently inadvertent solely administrative action, may extinguish a State right specifically granted by Congress by hiding behind the cloak of sovereign immunity and a statute of limitations.

The right in question was granted by what is now 43 U.S.C. §932, which was in effect in 1893, and which provided as follows:

> "The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted."

It is submitted that the application of the statute of limitations in this case would be in derogation of the grant conferred by what is now 43 U.S.C. §932. It is submitted that the enactment of 43 U.S.C. §932, which has been on the books, apparently, since 1866, is a recognition by Congress of the extreme importance of public highways and would indicate that Congress would not intend the limitations period of 28 U.S.C. §2409a(f) to apply where a right granted by 43 U.S.C. §932 is sought to be enforced.

And the issue also relates to the philosophy of Amendment 10 to the Constitution of the United States and the reservation of the powers to the States contained therein.

As Mr. Justice White is quoted as saying, while on a visit to Montana, in the September 14, 1980 issue of "The Billings Gazette", a newspaper published in Billings, Montana:

> "There are many areas, things the federal government can't and shouldn't touch. I think the court should be very careful about state rights...I think the court should be very careful to retain state power and not unduly frustrate it."

This Court discussed the concept which is at issue here in **Metropolitan Railroad Company v. District of Columbia,** 132

U.S. 1 (1890).

This suit involved a suit by the District of Columbia to recover from the Metropolitan Railroad Company certain moneys expended as a result of the alleged neglect of the defendant to do certain work and furnish materials in accordance with its duty as prescribed by its charter.

The Court determined that District of Columbia, by specific legislation, was at that time a municipal corporation and was subject to the ordinary rules that governed the law of procedure between private persons, including statutes of limitations, and that the applicable statute of limitations embraced municipal corporations.

This Court, in discussing the statute of limitations, stated (132 U.S. at 11):

> "It cannot apply to the sovereign power, of course. No restrictive laws apply to the sovereign, unless so expressed. And especially no laws affecting a right on the ground of neglect or laches, because neglect and laches cannot be imputed to him. And it matters not whether the sovereign be an individual monarch, or a republic or state. The principle applies to all sovereigns. The reason usually assigned for this prerogative is, that the sovereign is not answerable for the delinquencies of his agents. But whatever the true reason may be, such is the general law – such the universal law, except where it is expressly waived."

The Court, although finding the municipal corporation to be subject to the statute of limitations with regard to the subject matter being sued upon, limited the application of the holding by going on to state (132 U.S. at 12):

> "What may be the rule in regard to purprestures and public nuisances, by encroachments upon the highways and other public places, it is not necessary to determine. They are generally offences against the sovereign power itself, and, as such, no length of time can protect them."

In Montana, counties are **not** municipal corporations. They

are governmental agencies or political subdivisions of the state, organized for the purposes of exercising some functions of the state government. Such subdivisions are instrumentalities of government, and exercise the powers delegated by the state, and act for the state. **Hersey v. Neilson,** 47 Mont. 132, 131 Pac. 30 (1913).

The second question of importance here is how much action is needed on the part of the Federal government to set the statute of limitations of 28 U.S.C. §2409a(f) running to extinguish the right granted by Congress in, apparently, 1866 by what is now 43 U.S.C. §932.

As pointed out heretofore, the acts relied upon by both the District Court and the Court of Appeals were the obviously inadvertent and solely administrative actions by the Forest Service in erecting a sign and a rock pile in a remote area of the National Forest.

There was no evidence that any official of Sweet Grass County or Park County had actual notice of or saw the sign or rocks more than 12 years prior to the commencement of this action.

Before anyone can be charged with constructive notice of a fact, he must first have actual notice of **some** fact that would lead to a duty of inquiry as to the ultimate fact. No duty can exist without knowledge of the facts, or at least, knowledge sufficient to put one on inquiry which will lead to a discovery of the facts, upon which such duty rests. **Bartz v. Paff,** 95 Wis. 95, 69 N.W. 297.

A person who is wholly ignorant of facts from which a presumption of constructive notice arises does not have "constructive notice" of such facts. **Williams v. Jefferson Standard Life Ins. Co.,** 187 S.C. 103, 196 S.E. 519 (1938).

The U.S. Supreme Court, in **U.S. v. Detroit Timber & Lumber Co.,** 200 U.S. 321, stated a rule applicable to the question of "should have known" as follows:

> "When a person has not actual notice he ought not to be treated as if he had notice, unless the circumstances are such as to enable the court to say, not only that he might have acquired, but also that he ought

to have acquired, it but for his **gross negligence** in the conduct of the business in question." (Emphasis supplied.)

Surely, it cannot be said as a matter of law that the County Commissioners of either County can be charged with gross or culpable negligence in not ascertaining that the Forest Service had erected a sign and placed a few small rocks in 1962 in an extremely remote area.

In connection with this issue is the question of whether the right granted by Congress, by what is now 43 U.S.C. §932, can be extinguished over an entire road by erection of a sign which clearly relates only to a small portion of the road.

It is submitted that the questions at issue here are "important questions of federal law which have not been, but should be, settled by this court", within the meaning of Rule 17 of the Rules of the United States Supreme Court.

The precedent set here by the lower courts is extremely important, particularly in the states which have large amounts of Federal lands. If it is upheld, the setting of a speed limit sign or some other innocuous traffic sign, alongside a state highway which runs through Federal land, could result in running of the 28 U.S.C. §2409a(f) statute of limitations and extinguish the state highway right after 12 years.

CONCLUSION

For the foregoing reason this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PARK COUNTY ASSOC. et al.,
Appellant
v.
USA, CROSS CREEK PROTECTIVE ASSOCIATION
Appellee

No. 78-1930
OPINION

Appeal from the United States District Court
for the District of Montana

Before: KENNEDY and SCHROEDER, Circuit Judges, and TANNER*, District Judge.

PER CURIAM

Appellants/[1] appeal from the dismissal of the defendant, United States, and the motion for summary judgment of defendant-intervenor, Cross Creek Protective Association, under the provisions of the Quiet Title Act, 28 USC §2409a(a)/[2] and (f)/[3]. We affirm.

Appellants are counties, which are political subdivisions of the State of Montana. On October 4, 1976, Appellants filed a complaint, pursuant to 28 USC §2409, to quiet title to an easement across certain lands located within the boundaries of the Gallatin National Forest. Subsequently, Cross Creek Protective Association (hereinafter referred to as "Cross Creek"), a local citizen organization, was allowed to intervene as a party defendant.

*The Honorable Jack E. Tanner, United States District Judge for the Western District of Washington, sitting by designation.

The issues presented on appeal are: (1) whether the 12-year statute of limitations under 28 USC §2409a(f) applies to every action brought under that act, notwithstanding that the plaintiff is a state, a political subdivision of a state, or some other governmental entity, and (2) whether the district court properly concluded that as a matter of law there was adequate notice that the appellants knew or should have known of the claim of the United States to the purported right-of-way more than 12 years before this action was brought.

Appellants contend that the 12-year statute of limitations in 28 USC §2409a(f) is inapplicable to them because they are "political subdivisions of the state government." In support of this proposition they allege that because counties are governmental agencies or political subdivisions of the state government with powers delegated by the state, they are in effect "arms" of the state government and as such are imbued with the sovereignty of the state. Appellants also argue that because the dispute is over public roads and appellants are acting to protect the "public rights" they, therefore, are acting under the cloak of state sovereignty.

The district court concluded that it had no power to engraft exceptions for any reason to the language of 28 USC §2409a(f) and that the 12-year statute of limitations as established by Congress must be strictly construed. It noted the explicit language of 28 USC §2409a(f) which provides that: "**Any** civil action under this section shall be barred **unless** it is commenced within 12 years of the date upon which it accrued". (emphasis added). Since the defense of the statute of limitations is jurisdictional in suits against the United States, failure to satisfy the requirements of 28 USC §2409a(f) cannot be waived and may be raised at any time. **Grosz v. Andrus,** 556 F2d. 972 (9th Cir. 1977).

The district court observed that the plaintiffs-appellants failed to point to any statutory language or legislative history that would support the proposition that counties enjoy a status different from all other litigants under 28 USC §2409a(f). We agree. **See** H.R. Rep. No. 92-1559, 92d Cong., 2d Sess. (1972), reprinted in [1972] U.S. Code Cong. & Ad. News 4547. Furthermore, in affirming the district court we find the cases/[4]

cited by appellants to be inapplicable because they are based primarily on common law doctrines of sovereignty and state court decisions interpreting the extent of this sovereignty. Unlike those cases, this case involves a federal statute of limitations in a suit against the United States in a federal forum. Such statutes of limitation are generally applicable to governmental entities as well as individuals. **See United States v. Louisiana,** 127 U.S. 182, 185, 192 (1888); **California v. United States,** 137 F. Suppl. 208 (Ct. Cl. 1955).

We now turn to the issue whether the appellant should have had notice or knowledge of the United States' claim.

The Absaroka National Forest was established on September 14, 1902, and was later named the Gallatin National Forest. Appellants claim that they own the road right-of-way that is within the boundaries of the Gallatin National Forest. The road right-of-way in controversy is located in both Park County and Sweet Grass County, Montana. Sweet Grass County was part of Park County until March 5, 1895.

Appellants also contend that all legal requirements for establishing this road were satisfied and that their actions constituted acceptance of a grant of a road right-of-way on public lands pursuant to 43 U.S.C. §932/[5] . The major portion of the purported road right-of-way claimed by the counties travels a route following Forest Service Trails 104 and 184. The district court concluded that "[U]nquestionably the trails are United States Forest Service Trails. The forest service has maintained the trails since the early part of the 20th Century. Neither of the counties has maintained the purported road or authorized expenditures of any county money to maintain any of the routes in the Absaroka National Forest."

When the Absaroka Primitive Area was established in April of 1932, a portion of the claimed right-of-way made by the Appellants followed forest service trail 104 through Absaroka Primitive area. In 1962, the Forest Service placed a sign at the North End of the Absaroka Primitive Area at the intersection of Slough Creek and Forest Service Trail 104. The sign stated: "Entering Absaroka Primitive Area-Motor Vehicles Prohibited-

Gallatin National Forests".

We are not persuaded by appellants' contention that the placing of the sign, approximately 41 air miles from the county seat of Park county, and approximately 48 air miles from the County Seat of Sweet Grass County, constituted notice, if any, only as to the portion of the right-of-way behind the sign./[6]

The sign gave notice that motor vehicle traffic was being prohibited by the Forest Service. A rock barrier was also placed across the trail in front of the sign. The district court, therefore, properly concluded that in 1962 the Forest Service claimed ownership and jurisdiction of the land transversed by the purported right-of-way by posting notice of its interest. **Grosz v. Andrus, supra.** The county should have known of the United States claim to the lands in question on or before October 4, 1964. In this regard, the denomination of the claim of the United States as legal or equitable has no practical significance on the question of notice of the United States interest and the property to which title is sought to be quieted. **Hatcher v. United States,** 402 F. Supp. 1192, 1194-95 (E.D. Cal. 1975).

Thus, the district court's dismissal of appellants' complaint was entirely proper. The district court did not err in concluding that this action was barred by 28 USC §2409a(f) or that the appellants knew or should have known of the claim of the United States to the purported right-of-way more than 12 years before this action was brought. Disposition by summary judgment was proper in that there was no genuine issue as to any material fact and that the appellees were entitled to judgment as a matter of law pursuant to 28 USC §2409a(f).

FOOTNOTES:

/1. Montana Association of Counties of Mountain States Legal Foundation was allowed to file an amici curiae brief.

/2. 28 USC §2409a(a) reads:

"The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights. This section does not apply to trust or restricted Indian lands, nor does it apply to or affect actions which may be or could have been brought under sections 1346, 1347, 1491, or 2410 of this title, sections 7424, 7425, or 7426 of the Internal Revenue Code of 1954, as amended (26 USC. 7424, 7425, and 7426) or section 208 of the Act of July 10, 1952 (43 U.S.C. 666)."

/3. 28 USC §2409a(f) provides:

"Any civil action under this section shall be barred unless it is commenced within twelve years of the date upon which it accrued. Such action shall be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States."

/4. **Ralston v. Town of Weston,** 46 W. Va. 544, 33 S.E. 326 (1899).

/5. 43 USC 932 reads as follows:

"The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted, R.S. §2477."

/6. The appellants also contend that, even if they had notice of the United States claim to that portion of the purported right-of-way located "behind" the Forest Service sign, this notice would not apply to the remainder of the right-of-way. However, in 1962 the appellants were put on notice that the United States claimed control over at least a substantial portion of the right-of-way. This claim should have put the appellants on constructive notice and alerted them to make the reasonable inquiry as to the remainder of the purported right-of-way since the remainder would have little or no remaining utility if it were served.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

PARK COUNTY, MONTANA, and SWEET GRASS COUNTY, MONTANA, political subdivisions of the State of Montana,

Plaintiffs,

-vs.-

UNITED STATES OF AMERICA, acting by and through the SECRETARY OF AGRICULTURE and the FOREST SUPERVISOR of the Gallatin National Forest, and all other persons, known or unknown, claiming or who might claim any right, title, estate or interest in, or lien or encumbrance upon the real property described in the Complaint, or any part thereof, adverse to the plaintiffs' ownership, or any cloud upon the plaintiff's title thereto, whether such claim or possible claim be present or contingent, including any claim or possible claim of dower, inchoate or accrued, or elective share of a surviving spouse,

Defendants.

CROSS CREEK PROTECTIVE ASSOCIATION,

Defendant-Intervenor.

} CV-76-125-BLG MEMORANDUM AND ORDER

The plaintiff counties have filed an action seeking to quiet title to certain lands located within the boundaries of the Gallatin National Forest. The land in question is a purported road right-of-way alleged to have been established by a survey conducted in 1893. The road supposedly established a route from Chimney Rock Pass, generally following what has now been designated as Forest Service Trail No. 184, to a point where it joins another road said to have been established. The joining trail runs from the vicinity of the Hidden Treasure Mine across the Boulder River Basin through the Slough Creek Divide and down Slough Creek to Lake Abundance Creek, generally following a route designated as Forest Service Trail No. 104. The United States has moved the Court to dismiss this action for lack of jurisdiction. The motion is supported by a brief. Likewise, defendant intervenor, Cross Creek Protective Association, has moved for summary judgment, with a supporting brief. The basis of both motions is the assertion that plaintiffs are barred from bringing the present action by the provisions of 28 U.S.C. § 2409a(f). The Court having considered the motions, finds that the case is a proper case for disposition by summary judgment in that there are no material facts in dispute and that defendants are entitled to judgment in their favor as a matter of law. Rule 56, Federal Rules of Civil Procedure.

The United States may be named as a party defendant in a civil action to adjudicate a disputed title to real property in which the United States claims an interest. 28 U.S.C. § 2409a(a). However, there are restrictions placed on the bringing of such an action. One such limitation is the period within which the case must be commenced. 28 U.S.C. § 2409a(f) provides:

> "Any civil action under this section shall be barred unless it is commenced within twelve years of the date upon which it accrued. Such action shall be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States."

In considering the applicability of the period of limitations set forth in § 2409a(f), it is necessary to note that the statute of limitations is jurisdictional. **Gendron v. United States,** 402 F.

Supp. 46 (E.D. Cal. 1974), **aff'd** 524 F. 2d 1154 (9th Cir. 1975). **See also, Groz v. Andrus,** 556 F. 2d 972 (9th Cir. 1977); **Power v. United States,** 390 F. 2d 602 (9th Cir. 1968). In suits against the United States, the question of the statute of limitations is a defense which cannot be waived because of the sovereign power of the United States. **H-10 Water Taxi Company, Ltd. v. United States,** 379 F. 2d 963 (9th Cir. 1967). Finally, although there may be cases where exceptions to the applicability of the statutes of limitations might be desireable, the Courts are not at liberty to draft any exception to the requirements of 20 U.S.C. § 2409a(f). **Mann v. United States,** 399 F. 2d 672 (9th Cir. 1968). The United States may be sued only when it consents to be sued. **Simons v. Vinson,** 394 F. 2d 732 (5th Cir. 1968). When the consent to sue does exist, the suit may continue only when the preconditions for the waiver of sovereign immunity are met. In light of this, the limitations period set forth in 28 U.S.C. § 2409a(f), established by Congress, must be strictly observed and exceptions thereto are not to be implied. **Mann v. United States, supra** at 673.

This case was filed on October 4, 1976. A careful reading of the affidavits, interrogatories, and exhibits contained in the Court record reveals that Park and Sweet Grass Counties knew or should have known, within the meaning of § 2409a(f), of the claim by the United States to the land in question on or before October 4, 1964, a period of twelve years before the case was commenced.

The Absaroka National Forest was established on September 4, 1902, and was later renamed the Gallatin National Forest. The road right-of-way which plaintiff counties claim they own is within the boundaries of the Gallatin National Forest. The major portion of the purported road right-of-way claimed by the counties travels a route following Forest Service trails 104 and 184. Unquestionably, the trails are United States Forest Service trails. The Forest Service has maintained the trails since the early part of the Twentieth Century. Neither of the counties has maintained the purported road or authorized expenditures of any county money to maintain the routes in the Absaroka National Forest.

When the Absaroka Primitive Area was established in

April of 1932, a portion of the claimed right-of-way made by the plaintiffs followed Forest Service trail 104 through the Absaroka Primitive Area. In 1962, the Forest Service placed a sign at the north end of the Absaroka Primitive Area at the intersection of Slough Creek and Forest Service trail 104. The sign stated: "Entering Absaroka Primitive Area - Motor Vehicles Prohibited - Gallatin National Forest" Notwithstanding any question as to whether the purported road actually traveled through the Absaroka Primitive Area, it is undisputed that in 1962 the Forest Service claimed ownership and jurisdiction of the land traversed by the purported right-of-way by posting notice of its interest. The counties should have known of the United States' claim to the lands in question on or before October 4, 1964. In this regard, the denomination of the claim of the United States as legal or equitable has no practical significance on the question of notice of the United States' interest in the property to which title is sought to be quieted. **Hatter v. United States,** 402 F. Supp. 1192, 1194-95 (E.D. Cal. 1975).

The plaintiff counties argue that, even if the Court were to find that sufficient facts exist to find that the counties, or their predecessors in interest, knew or should have known of the claims of the United States to the land in question, the twelve-year period of limitations does not run against the state. The proposition put forth by the counties is that because the county is an arm of the state and because time does not run against the Crown when public rights are involved, and because the road right-of-way claimed here is a public right, then the twelve-year period for the statutes of limitation does not apply to these plaintiffs. Whatever appeal the argument may have, this Court has no power to engraft exceptions, for whatever reason, to the language of 28 U.S.C. §2409a(f). The twelve-year limitation was established by the Congress and must be strictly observed. **Mann v. United States, supra** at 673. In an action brought against the United States to quiet title to property claimed by the United States, the action must be brought within twelve years of the time the plaintiffs knew or should have known of the claim of the United States, regardless of whether the plaintiff is an arm of the state or an individual.

Therefore,

IT IS ORDERED that the motion to dismiss of the defendant United States be, and the same hereby is, granted.

IT IS FURTHER ORDERED that the motion for summary judgment of defendant intervenor, Cross Creek Protective Association, be, and the same hereby is, granted.

IT IS FURTHER ORDERED that judgment be entered by separate document in favor of the defendants and denying the plaintiffs all relief.

The Clerk is directed to notify the parties of the entry of this order.

Done and dated this 17th day of March 1978.

James F. Battin
United States District Judge

JUDGMENT ON DECISION BY THE COURT

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF MONTANA - BILLINGS DIVISION

PARK COUNTY, MONTANA and SWEET GRASS COUNTY, MONTANA, political subdivisions of the State of Montana,

Plaintiff,

vs.

UNITED STATES OF AMERICA, et al

Defendants

Civil Action File No. 76-125-BLG JUDGMENT

This action came on for hearing before the Court, Honorable James F. Battin, United States District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

It is Ordered and Adjudged that the motion to dismiss of defendant United States is granted. IT IS FURTHER ORDERED that the motion for summary judgment of defendant intervenor, Cross Creek Protective Association is granted. IT IS FURTHER ORDERED that judgment is entered in favor of the defendants and that plaintiff is denied all relief.

Dated at Billings, Montana, this 21st day of March, 1978.

JOHN E. PEDERSON
Clerk of Court
By/ Judy A. Lien
Deputy Clerk

JUDGMENT

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PARK COUNTY ASSOC., et al.,
Appellant,
vs.
USA, CROSS CREEK PROTECTIVE ASSOCIATION,
Appellee.

No. 78-1930
DC CV 76-125
JFB

APPEAL from the United States District Court for the District of MONTANA (BILLINGS).

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the District of MONTANA (BILLINGS) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

Filed and entered August 29, 1980

A TRUE COPY ATTEST 22 Sept. 1980
Richard H. Deane
Clerk of Court
by: Oscar Tagle
Deputy Clerk

CERTIFICATE OF SERVICE

The undersigned, a member of the Bar of the Supreme Court of the United States, and counsel of record for Petitioners, does hereby certify, pursuant to Rule 28 of the Rules of the United States Supreme Court, that on the 10th day of Nov., 1980, three (3) copies of the foregoing Petition were served upon all parties required to be served, in the following manner:

(1) Upon the Respondent, UNITED STATES OF AMERICA, by depositing them in the United States Post Office at Big Timber, Montana, with air mail postage prepaid, addressed as follows:

Solicitor General
Department of Justice
Washington, D.C. 20530

(2) Upon the Respondent, CROSS CREEK PROTECTIVE ASSOCIATION, by depositing them in the United States Post Office at Big Timber, Montana, with first class postage prepaid, addressed to counsel of record as follows:

James H. Goetz
Goetz and Madden
Attorneys at Law
P.O. Box 1322
Bozeman, Montana 59715

DATED this 10th day of Nov., 1980.

Conrad B. Fredricks

Conrad B. Fredricks

Supreme Court, U.S.
FILED
DEC 10 1980
MICHAEL RODAK JR., CLERK

No. 80-783

IN THE SUPREME COURT
OF THE
UNITED STATES
October Term, 1980

PARK COUNTY, MONTANA and SWEET GRASS COUNTY, MONTANA, political subdivisions of the STATE OF MONTANA,

Petitioners,

-vs-

UNITED STATES OF AMERICA, acting by and through the SECRETARY OF AGRICULTURE and the FOREST SUPERVISOR of the Gallatin National Forest, and CROSS CREEK PROTECTIVE ASSOCIATION,

Respondents.

ON WRIT OF CERTIORARI TO THE
COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF OF CROSS CREEK PROTECTIVE ASSOCIATION IN OPPOSITION TO PETITION FOR CERTIORARI

Counsel for Respondent, CROSS CREEK PROTECTIVE ASSOCIATION:

JAMES H. GOETZ
Goetz & Madden
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Bozeman, Montana 59715
Phone: (406) 587-0618

No. 80-783

IN THE SUPREME COURT

OF THE

UNITED STATES

October Term, 1980

PARK COUNTY, MONTANA and SWEET GRASS COUNTY, MONTANA, political subdivisions of the STATE OF MONTANA,

Petitioners,

-vs-

UNITED STATES OF AMERICA, acting by and through the SECRETARY OF AGRICULTURE and the FOREST SUPERVISOR of the Gallatin National Forest, and CROSS CREEK PROTECTIVE ASSOCIATION,

Respondents.

ON WRIT OF CERTIORARI TO THE
COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF OF CROSS CREEK PROTECTIVE ASSOCIATION IN OPPOSITION TO PETITION FOR CERTIORARI

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STATUTES INVOLVED

The statute involved is 28 U.S.C. §2409a, Federal quiet title statute, which is reproduced at pp. 3-5 of the Petition for Certiorari.

QUESTIONS PRESENTED

1. Whether the 12-year statute of limitations under 28 U.S.C. §2409a(f) applies to every action brought under that act, notwithstanding that the plaintiff is a state, a political subdivision of a state, or some other governmental entity; and,

2. Whether the district court properly concluded that as a matter of law there was adequate notice that the plaintiff counties knew or should have known of the claim of the United States to the purported right-of-way more than 12 years before this action was brought.

STATEMENT

Petitioners are counties, which are political subdivisions of the State of Montana. On October 4, 1976, Petitioners filed a complaint, pursuant to 28 U.S.C. §2409, to quiet title to a claimed

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easement across certain lands located within the boundaries of the Gallatin National Forest. Subsequently, Cross Creek Protective Association (hereinafter referred to as "Cross Creek"), a local citizen organization, was allowed to intervene as a defendant.

The Petitioners claim that they established the alleged road in 1893 across the unreserved public domain pursuant to 43 U.S.C. §932.[1]

The United States and Cross Creek both raised the 12-year statute of limitations, 28 U.S.C. §2409a(f), as a bar to the counties' actions. The Petitioners contend that, notwithstanding its literal wording,[2] the statute of limitations is

---

[1] 43 U.S.C. §932 reads as follows:

"The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted. R.S.§2477."

The Gallatin National Forest was not created until 1902 (then called the "Absaroka" National Forest). Therefore, the right-of-way in question was not "reserved for public uses" in 1893 when the road allegedly was established.

[2] 28 U.S.C. §2409a(f) provides:

"Any civil action under this section shall be barred unless it is commenced within 12 years of the date upon which it accrued...."

inapplicable to them because they are "political subdivisions" of the state government.

The District Court rejected the Petitioners' argument holding that it had no power to engraft exceptions for any reasons to the language of 28 U.S.C. §2409a(f) and that the 12-year statute of limitations must be strictly construed. The Court of Appeals affirmed.

Dismissal and Summary Judgment were granted on the statute of limitations question. The District Court and the Court of Appeals held that the purported right-of-way travels a route following two Forest Service trails. The District Court concluded that "[U]nquestionably the trails are United States Forest Service trails. The Forest Service has maintained the trails since the early part of the Twentieth Century. Neither of the counties has maintained the purported road or authorized expenditures of any county money to maintain the routes in the Absaroka National Forest." (See p. 20, Appendix to Petition for Certiorari).

The lower courts also found that a

portion of the claimed right-of-way follows a trail which passes through Absaroka Primitive Area, which was established in April of 1932. In 1962, over 12 years before commencement of this action, the Forest Service placed a sign on the trail at the north end of the Absaroka Primitive Area at a point at which the purported road follows the trail. The sign stated "Entering Absaroka Primitive Area--Motor Vehicles Prohibited--Gallatin National Forest."

The Circuit Court observed: "The sign gave notice that motor vehicle traffic was being prohibited by the Forest Service. A rock barrier was also placed across the trail in front of the sign. The district court, therefore, properly concluded that in 1962 the Forest Service claimed ownership and jurisdiction of the land traversed by the purported right-of-way by posting notice of its interest... The county should have known of the United States' claim to the lands in question on or before October 4, 1964." (P. 16, Appendix to Petition for Writ of Certiorari).

ARGUMENT AND LEGAL AUTHORITY

The two questions presented are unimportant. The Petition for Certiorari puts forward no persuasive reason why the limited and valuable time of the United States Supreme Court should be spent on this case.

The second question listed above under "Questions Presented" is simply whether summary judgment is proper. It appears that the Petitioners want an opportunity to re-argue the particular facts of the case to persuade this Court that there are material factual issues in dispute which warrant a remand. See concurring opinion of Justice Stewart in Sentilles v. Inter-Caribbean Shipping Corp., (1959) 361 U.S. 107, 111 S. Ct. 173, 4 L. Ed. 2d 142: "To review individualized personal injury cases, in which the sole issue is sufficiency of the evidence, seems to me not only to disregard the Court's proper functions, but also to deflect the Court's energies from the mass of important and difficult business properly here...."

The other question at issue, whether the statute of limitations, 28 U.S.C.

§2409a(f) applies to subdivision of state governments, is likewise unimportant. There is no conflict among the Federal Circuits or among the states on this question. There is no showing that the decisions below are in conflict with decisions of this Court. No showing is made that this case fits any of the categories listed under Rule 17, Rules of the Supreme Court of the United States.

Apart from the unimportance of the issues (beyond the interests of the immediate parties), it is the case that the questions presented were correctly decided by the courts below.

The reasons underlying the requirement of strict compliance with Federal statutes of limitations are concisely articulated in numerous Federal cases. In United States v. Sherwood, 312 U.S. 584 (1941), this Court said:

> "The United States, as sovereign, is immune from suit save as it consents to be sued (citing cases) ...and the terms of its consent to be sued in any court define that court's jurisdiction to entertain the suit. (Emphasis added).

Thus, the United States is immune from suit unless it consents to be sued. This is a jurisdictional question. Unless

Congress confers jurisdiction, there is none. And jurisdiction is conferred on such terms, restrictions, and limitations, as Congress sees fit. This is confirmed in Munro v. United States, 303 U.S. 38, where the Court held:

> "Suits against the United States can be maintained only by permission, in the manner prescribed and subject to the restrictions imposed. Reid v. United States, 211 U.S. 529, 538." 303 U.S. at 41.

Prior to the enactment of the quiet title statute here in question (28 U.S.C. §2409a), there was no right to sue the Federal Government to quiet title. See Simmons v. Vinson, 394 F. 2d 732 (5th Cir., 1968). The enactment of 28 U.S.C. §2409a constituted a limited waiver of sovereign immunity by the Congress--but such waiver was upon the conditions that the Congress established. Among such conditions was the statute of limitations, 28 U.S.C. §2409a(f), which is as follows:

> "Any civil action under this section shall be barred unless it is commenced within twelve years of the date upon which it accrued...." (Emphasis added).

Petitioner asks this Court, on policy grounds, to carve an exception to the rule of strict compliance with the statute of limitations for entities of local government. This cannot be done if the integrity of the principle of Federal sovereign immunity is to be preserved.

The Ninth Circuit has squarely rejected a similar plea for relaxed compliance with a federal statute of limitations in Mann v. United States, 399 F. 2d 672 (1968). In Mann, an Indian brought untimely suit under the Federal Tort Claims Act. He argued on appeal (after dismissal) that the limitation period should be enlarged for him, for policy reasons. The Ninth Circuit rejected his plea, finding itself without power to change the strictures established by Congress:

> "...[W]e are...convinced that Congress has left no room for an exception to be made in the present case. Although exceptions to the applicability of the limitations period might occasionally be desirable, we are not free to enlarge that consent to be sued which the Government, through Congress, has undertaken so carefully to limit. See United States v. Sherwood, 312 U.S. 584...(1971). The limitations period established

> by Congress 'must be strictly observed and exceptions thereto are not to be implied.'" 352 U.S. 220, 226 (1957). (Emphasis added).

In the present case, there is no exception for states or counties contained in the statute of limitations, 28 U.S.C. §2409a(f). Indeed, the language is clear and to the contrary. As stated by this Court in Soriano v. United States, 352 U.S. 270, there must be strict observance of the limitations period established by Congress, and exceptions "are not to be implied."

There being no exceptions to the requirements of 28 U.S.C. §2409a(f), Petitioners are forced to ask this Court to find one by implication. These policy arguments would be better directed to Congress. As the Supreme Court indicated in Soriano, the judiciary is not free to develop exceptions. See also Gendron v. United States, 402 F. Supp. 46 (E.D.Cal., 1974), aff'd. 524 F. 2d 1154 (9th Cir., 1975); Grosz v. Andrus, 556 F. 2d 972 (9th Cir., 1977); Power v. United States, 390 F. 2d 602 (9th Cir., 1968); H-10 Water Taxi Co. Ltd. v. United States, 379 F. 2d

963 (9th Cir., 1967).

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

JAMES H. GOETZ

Counsel of Record for
Respondent Cross Creek
Protective Association
Address: P. O. Box 1322
Bozeman, Montana
59715

CERTIFICATE OF SERVICE

The undersigned, a member of the Bar of the Supreme Court of the United States, and counsel of record for Respondent, Cross Creek Protective Association, does hereby certify, pursuant to Rule 28 of the Rules of the United States Supreme Court, that on the 5th day of December, 1980, copies of the foregoing Brief were served upon all parties required to be served as follows:

Solicitor General
Department of Justice
Washington, D. C. 20530

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Dated this 7th day of December, 1980.

JAMES H. GOETZ

SUPREME COURT, U.S.
FILED
DEC 19 1980

No. 80-783

In the Supreme Court of the United States

OCTOBER TERM, 1980

PARK COUNTY, MONTANA, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-783

PARK COUNTY, MONTANA, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

QUESTIONS PRESENTED

1. Whether the 12-year period of limitations under the Quiet Title Act, 28 U.S.C. 2409a(f), applies to every action brought under that Act, notwithstanding that the plaintiff is a political subdivision of a state.

2. Whether, in the circumstances of this case, the district court properly concluded that the plaintiffs knew or should have known of the claim of the United States to the purported right-of-way more than 12 years before this action was brought.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 13-17) is reported at 626 F.2d 718. The opinion of the district court (Pet. App. 18-22) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on August 29, 1980 (Pet. App. 24). The petition for a writ of certiorari was filed on November 15, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. This case concerns the title to a purported right-of-way easement located within the Gallatin National Forest in Montana. Petitioners Park County and Sweet Grass County, two political subdivisions of the State of Montana, contend that they were granted the right-of-way prior to establishment of the National Forest and that the right-of-way remains in their ownership.

The following facts are not in dispute. The right-of-way claimed by petitioners lies entirely within the boundaries of the Gallatin National Forest, and a substantial portion of the right-of-way coincides with either Forest Service Trail 104 or Forest Service Trail 184 (R. 2-3, 54-56, 59-61, 75, 76-77).[1] These trails have been maintained by the United States Forest Service as official trails since at least 1930 (R. 99-100). Neither Park County nor Sweet Grass County, at least since the establishment of the National Forest in 1902, has maintained Forest Service

[1] "R." refers to the Clerk's Record filed in the court of appeals.

Trails 104 or 184 or has authorized the expenditure of county funds to do so (R. 56-57, 61-62, 75, 77). On April 4, 1932, a portion of the Gallatin National Forest was designated as the "Absaroka Primitive Area" (R. 82). A portion of the right-of-way claimed by petitioners follows the course of Forest Service Trail 104 as that trail approaches the north end of the Absaroka Primitive Area near the intersection of the trail and a watercourse called Slough Creek (R. 68, 70). In 1962, the Forest Service placed a sign at the immediate west edge of Forest Service Trail 104 near its intersection with Slough Creek. The sign read as follows: "Entering Absaroka Primitive Area—Motor Vehicles Prohibited—Gallatin National Forest" (R. 68, 70, 96-98, 102-105; Pet. App. 21). In addition, the Forest Service simultaneously constructed a rock barrier across the trail in front of the sign (R. 96).

2. On October 4, 1976, petitioners brought this action against the United States [2] to quiet title to the claimed right-of-way. In their complaint petitioners alleged that between 1888 and 1893 a particular road had been established by use and that the route followed by this road generally corresponds to the route followed by Forest Service Trail 104. They also alleged that in 1893 a second intersecting road was surveyed by Park County [3] and that this second segment of the right-of-way generally follows the route presently designated as Forest Service Trail 184.

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[2] The Cross Creek Protective Association, a local citizen organization, was subsequently permitted to intervene as a defendant.

[3] Sweet Grass County was part of Park County until 1895. The right-of-way is located partly in Park County and partly in Sweet Grass County (R. 2).

Petitioners further maintained that all legal requirements for establishing these roads were satisfied and that their actions constituted acceptance of a highway right-of-way grant on public lands pursuant to the Act of July 26, 1866, Rev. Stat. 2477, 43 U.S.C. (1970 ed.) 932.[4]

Following extensive discovery proceedings, the Cross Creek Protective Association moved for summary judgment on the ground that petitioners' suit was barred by the 12-year statute of limitations contained in 28 U.S.C. 2409a(f) (R. 79). The United States subsequently moved to dismiss petitioners' action for lack of subject matter jurisdiction (R. 93-95).

On March 17, 1978, the district court granted summary judgment for respondents (Pet. App. 18-22). It concluded (*id.* at 20) that petitioners knew or should have known of the adverse claim of the United States to the right-of-way more than 12 years prior to the filing of their suit and that, therefore, their action was barred by the 12-year period of limitations. In reaching this conclusion, the district court also ruled (*id.* at 21) that the provisions of 28 U.S.C. 2409a(f) apply to all quiet title actions against the United States, regardless of whether the plaintiff is a political subdivision of a State.

The court of appeals affirmed (Pet. App. 13-17). It agreed with the district court that the 12-year statute of limitations in 28 U.S.C. 2409a(f) applies

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[4] 43 U.S.C. (1970 ed.) 932 read as follows: "The right of way for the construction of highways over public lands, not reserved for public uses, is granted." 43 U.S.C. (1970 ed.) 932 was expressly repealed by Section 706(a) of the Federal Land Policy and Management Act of 1976, Pub. L. No. 94-579, 90 Stat. 2793. The acquisition of rights-of-way over public lands is now governed by Title V of that Act, 43 U.S.C. 1761-1771.

to every action brought under the Quiet Title Act, notwithstanding that the plaintiff happens to be a political subdivision of a state (*id.* at 14-15). The court of appeals also ruled that petitioners should have known of the claim of the United States to the purported right-of-way on or before October 4, 1964 (*id.* at 15-16).

ARGUMENT

This case presents no issue warranting review by this Court. The decision of the court of appeals is correct and does not conflict with any decision of this Court or any other court of appeals.

1. Petitioners' first contention is that they are exempt from the 12-year statute of limitations in 28 U.S.C. 2409a(f) because they are political subdivisions of a State seeking to establish ownership of a public highway. The court of appeals' rejection of that argument is entirely consistent with the language and intent of 28 U.S.C. 2409a(f) and with the pertinent decisions concerning the application of statutes of limitations to governmental entities in suits against the United States.

It is well established that "[t]he United States, as sovereign, is immune from suit save as it consents to be sued [citations omitted] and the terms of its consent to be sued in any court define that court's jurisdiction to entertain the suit." *United States* v. *Sherwood*, 312 U.S. 584, 586 (1941). Accord, *United States* v. *Shaw*, 309 U.S. 495, 500-501 (1940); *Munro* v. *United States*, 303 U.S. 36, 41 (1938). Even a State of the Union may sue the United States to quiet a claimed title to land only by virtue of 28 U.S.C. 2409a. See *California* v. *Arizona*, 440 U.S. 59, 61-62 (1979). In invoking a waiver of sovereign immunity, the plaintiff—whether a State or county or private claimant—is required to take the bitter with

the sweet. As this Court has observed, the terms under which the United States consents to be sued "must be strictly observed and exceptions thereto are not to be implied." *Soriano* v. *United States*, 352 U.S. 270, 276 (1957). See also *United States* v. *Kubrick*, 444 U.S. 111, 117-118 (1979).

Congress provided a limited consent for suits against the United States to quiet title to real property through the Quiet Title Act, 28 U.S.C. 2409a. In particular, Congress established a 12-year statute of limitations for such quiet title actions in 28 U.S.C. 2409a(f), which provides:

> Any civil action under this section shall be barred unless it is commenced within twelve years of the date upon which it accrued. Such action shall be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States.

The language of 28 U.S.C. 2409a(f) is clear; *any* civil action is barred unless it is brought within the prescribed 12-year period. The section sets forth no exceptions to this requirement. Moreover, petitioners have been unable to point to any language in the statute's legislative history indicating that counties should enjoy a status different from that of other litigants.[5] Since statutes of limitations in suits

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[5] In fact, the legislative history reveals that a proposal to make the Quiet Title Act fully retroactive was rejected because of congressional concern that the courts would be flooded with litigation involving stale claims. See H.R. Rep. No. 92-1559, 92d Cong., 2d Sess. 5 (1972). See also *Hatter* v. *United States*, 402 F. Supp. 1192, 1194 (E.D. Cal. 1975). Under petitioners' theory, however, states and counties would be able

against the United States are to be strictly construed (see *Soriano* v. *United States*, *supra*, 352 U.S. at 276), petitioners have failed to meet their burden of showing that they are somehow exempt from the statutory language.

Furthermore, the pertinent decisions establish that, absent an express exception, states and counties are not exempt from statutes of limitations in actions against the United States. See, *e.g.*, *United States* v. *Louisiana*, 127 U.S. 182, 192 (1888); *United States* v. *422,978 Square Feet of Land, San Francisco*, 445 F.2d 1180, 1187-1188 (9th Cir. 1971). See also *Guaranty Trust Co.* v. *United States*, 304 U.S. 126, 135 n.3 (1938); *Boone County* v. *Burlington and Missouri River R.R.*, 139 U.S. 684, 693 (1891).[6] For example, in *United States* v. *Louisiana*, *supra*, this Court specifically held that a six-year statute of limitations was applicable against the State of Louisiana in its suit against the United States to recover proceeds from land sales.

In short, Congress may apply statutes of limitations against states and counties, and it did so with regard

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to litigate quiet title actions against the United States involving claims which are many decades old. This result would obviously be contrary to congressional intent.

[6] The sole decision on which petitioners rely concerning this point (Pet. 8-9), *Metropolitan R.R.* v. *District of Columbia*, 132 U.S. 1 (1889), is inapposite. The decision contains *dicta* indicating that a general statute of limitations does not apply against states (*id.* at 11) and might not apply against the District of Columbia, at least in cases in which it attempted to vindicate some public right (*id.* at 12). The case was a suit not against the United States, however, but against a private corporation. The decision thus has no bearing on the power of Congress to prescribe the conditions on which the United States may be sued in a federal forum.

to the Quiet Title Act. The court of appeals properly concluded that petitioners were not exempt from the requirement that their action be brought within the 12-year period of limitations contained in 28 U.S.C. 2409a(f).

2. The second issue raised by petitioners—whether they knew or should have known of the claim of the United States more than 12 years before commencement of this action—is a narrow question highly dependent on the particular facts of this case. The question was correctly decided by the lower courts.

It is undisputed that in 1962 the Forest Service placed a sign at the immediate west edge of Forest Service Trail 104 at a point where the purported right-of-way coincides with the trail. This sign stated: "Entering Absaroka Primitive Area—Motor Vehicles Prohibited—Gallatin National Forest." The Forest Service simultaneously constructed a rock barrier across the trail in front of the sign.

Even assuming that petitioners had no knowledge of the United States' claim before 1962, the posting of the sign and construction of the rock barrier in that year put them on notice of the United States' exercise of ownership over the route followed by the purported right-of-way. See *Grosz* v. *Andrus*, 556 F.2d 972, 975 (9th Cir. 1977). The action of the Forest Service in prohibiting motor traffic on the route in question was completely adverse to petitioners' contentions that they possessed a right-of-way following the same route. Petitioners' additional argument (Pet. 11)—that even if the sign and rock barrier constituted notice as to that portion of the route behind the sign it constituted no notice as to the remainder of the route—is likewise without merit. Petitioners failed to show that the remainder of the

route would have any utility if the portion of the route behind the sign and the rock barrier were severed. Thus, petitioners were put on notice to make reasonable inquiry as to the remainder of the purported right-of-way.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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